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In the Supreme Court of the United States

No. 722.

OCTOBER TERM, 1962.

HARRY A. BLACHMAN,
As A Taxpayer,
Petitioner,

-against-

ERIEVIEW CORPORATION,
CITY OF CLEVELAND, OHIO,
HOUSING AND HOME FINANCE AGENCY,
ROBERT C. WEAVER, ADMINISTRATOR,
PUBLIC HOUSING ADMINISTRATION,
ROBERT C. WEAVER, ADMINISTRATOR,
UNITED STATES OF AMERICA,
Respondents.

REPLY BRIEF OF PETITIONER.

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The federal statute, 42 U. S. C. 1460 (c) *forbids* financial assistance to be extended with respect to any urban renewal area, which fails to comply with the two following conditions:

(1) That the area be predominantly residential, first and always, before or after renewal; and

(2) That the area be redeveloped for predominantly residential uses.

Only under certain circumstances is the second condition excused.

The respondents have fallen into error because of the second condition. The second condition is excused when the governing body determines that it is desirable *to redevelop or to renew nonresidentially*.

The first condition is never excused. The first requirement is the very heart and the motivating force which led to the enactment of the Housing Act of 1949. Its purpose was *"the goal of a decent home and suitable living environment for every American family."*

This purpose was reaffirmed when the Housing Act of 1961 was being framed and the committee declared:

> "After careful consideration of the problems which S. 1342 is designed to solve, the committee believes that this new program is required to achieve the national housing policy of "a decent home and suitable living environment for every American family."
>
> *U. S. Code Congressional And Administrative News-87th Congress-1961,* page 2011.

If the purpose of this legislation has been subverted in other areas of the United States without challenge, it is high time that the *legislative authority of the Congress of the United States be reestablished.*

When this matter was before the District Court, the District Judge agreed that the statute in question, 42 U. S. C. 1460(c) begins by describing a *residential area.* The court's memorandum opinion contains the following:

> "As stated in the original memorandum, the plaintiff relied upon part of the statute which provides for the redevelopment of residential areas * * *."

Since the subject area is a *residential area*, this enactment *cannot be turned into a nonresidential area* by anything which follows in the proviso clause.

We pointed this out in our brief. The respondents made no answer to this.

We pointed out that counsel for the City of Cleveland in oral argument before the reviewing court below said:

"If there were a period at the end of the first part of the statute, Mr. Blachman would be right."

Again, the respondents made no answer.

We pointed out that 42 U. S. C. 1460(c) is the only statute which allocates funds for predominantly residential urban renewal areas.

The respondents made no reply to this.

The respondents would by one fell swoop destroy all authority for extending financial assistance for predominantly residential areas.

We pointed out that *Section 113(b)* of the *Area Redevelopment Act acknowledges* that 42 U. S. C. 1460(c) describes a project area which is *predominantly residential in character*. This is not the statement of your petitioner. *This is the statement of the Congress of the United States.*

Section 113(b) excuses the requirement *that the area be predominantly residential* or that it be required to be *redeveloped for predominantly residential* uses in order to qualify for financial assistance under the *Area Redevelopment Act*.

Nonresidential areas may qualify for funds under the *Area Redevelopment Act, if* such areas are declared by the *Secretary of Commerce* to be *depressed areas where 6 per cent unemployment persists*.

The Erieview Area of Cleveland is not such a depressed area and was never declared to be a depressed area and is not entitled to federal financial assistance under the Area Redevelopment Act.

It is obvious that any committee reference, cited by the respondents, which is interpreted to indicate that the Area Redevelopment Act gives support to the respondents' contention, is totally without foundation. All we need to

do is to examine the following portion of *Section 113(b) of the Area Redevelopment Act*:

> "Sec. 113(b) Subject to the provisions of subsection (e) of this section, the Administrator may provide such financial assistance *without regard to the existing requirement that the project area be predominantly residential in character or be redeveloped for predominantly residential uses under the urban renewal plan* * * *."

The committee references cited by the respondents do not support the respondents' contention.

The confusion on the part of the respondents relates to the second requirement of 42 U. S. C. 1460(c), which relates to *redevelopment*.

At different times 10 per cent, then 20 per cent, and now 30 per cent of urban renewal funds may be used for *nonresidential redevelopment* under certain conditions.

But at all times this *nonresidential redevelopment* can only receive federal financial assistance in a *predominantly residential area*.

The District Judge well pointed out (p. 18 of City of Cleveland's brief) that:

> "The 1949 act made no provision for allocation of federal funds for redevelopment of nonresidential areas."

The 1954 Housing Act concerns itself only with an area which is

1. clearly residential, or
2. substantially residential, or
3 has a substantial number of blighted living accommodations.

The 1956 Housing Act and the 1959 Housing Act and the 1961 Housing Act each have the same concern and purpose and language in respect to the subject or project area:

"That financial assistance shall not be extended for any project involving slum clearance and redevelopment of an area which is not clearly predominantly residential *et seq.*". (1954 Housing Act)

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not clearly predominantly residential in character *et seq.*" (1956 Housing Act)

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not predominantly residential in character *et seq.*" (1959 Housing Act)

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not predominantly residential in character *et seq.*" (1961 Housing Act).

The 1956 and the 1959 Housing Acts appear more fully on page 10, Appendix, *infra*.

The committee report upon which the respondents rely totally ignores the following statement:

"Urban renewal projects presently are *required to be predominantly residential in character either before or after renewal*, except that 20 per cent of available urban renewal grant funds may be devoted to projects without regard to this requirement."

The *requirement* relates, of course, to the *redevelopment requirement*, which is the *second condition* of qualifying for urban renewal funds; otherwise, how would one explain the above statement that "*Urban renewal projects presently are required to be predominantly residential in character either before or after renewal*"?

The Congress of the United States understood this and recognized this; otherwise, the language of Section 113(b) of the Area Redevelopment Act would not have recited:

"* * * without regard to the requirement or limitations of Section 110 (c) that the project area be predominantly residential in character or be redeveloped for predominantly residential uses * * *."

Even if there were any confusion, it would be dispelled by the declaration of the Congress itself. No comment of any committee or declaration has any greater finality than that of the superior body, the law making body of the United States Government.

Statutes which are in *pari materia* are to be read and construed together. See 82 *Corpus Juris Secundum* 366. Also see *Board of Commissioners, etc. v. Bernardin*, 74 Fed. 2d 809, 814 (1914):

"* * * A construction of a statute by the Legislature, as indicated by a subsequent enactment, is entitled to consideration as an aid in interpreting such statute. Bailey v. Clark, 21 Wall 284, 22 L. Ed. 651; First Nat. Bank in St. Louis v. State of Missouri, 263 U. S. 640, 68 L. Ed. 486; Tiger v. Western Investment Co., 221 U. S. 286, 309, 59 L. Ed. 378, certification denied 295 U. S. 731, 79 L. Ed. 738."

The respondent City of Cleveland on pages 10 and 11 of its brief has quoted from the Section by Section Analysis of the Area Redevelopment Act regarding Section 113 (b). Such analysis, of course, completely supports the position of the petitioner.

In addition there appears on *page 1569 of said 1961 U. S. Code Congressional And Administrative News* the following:

"*Sixth*: The bill contains 2 sections which would vest additional authority in the HHFA Administrator in order to assist redevelopment areas.

Grants and loans for urban renewal could be made without regard to the "predominantly residential" requirement which must be met in most cases * * *."

Another reference in our brief which the respondents failed to explain is that of the *Urban Renewal Manual of the Housing And Home Finance Agency under date of 5/24/62*:

> "An area redevelopment *exception* is excepted *from the requirement of Section 110 (c) of Title I that the project area must be predominantly residential in character or must be redeveloped for predominantly residential uses.*"

The City of Cleveland made mention of the *Grisanti* case. Such mention is totally irrelevant as the respondent abandoned its claim of res judicata in the reviewing court below.

That other cities may have illegally received federal financial assistance in nonresidential areas, without being challenged, adds no weight to the respondent's argument and is likewise irrelevant.

Another irrelevancy interjected is the City's financing problems.

The City, in its own interest, should have joined with the petitioner in asking that the petition for a writ of certiorari be granted, so that this statute which has never been construed, may forever be free from doubt.

When the brief of the Federal Government contends on page 6 of its brief that the Proviso would be unnecessary under the petitioner's theory, we shall point out the error of such statement by the following example.

Were it not for the Proviso, the predominantly residential "Gladstone" Area of Cleveland would have to be *redeveloped residentially*, for there are two requirements, as we have previously pointed out, before an area can qualify for federal financial assistance. No one is challeng-

ing the right to redevelop nonresidentially in the "Gladstone" Area, nor could they by reason of the Proviso.

Furthermore, it would be absurd to hold that Congress intended to create an exception, within the meaning of this statute, that would permit commercial redevelopment in a commercial area.

The Proviso is needed to permit nonresidential redevelopment in a predominantly residential area.

Finally, the following facts have not been controverted:

1. That the Housing Act of 1949 from its inception, and as amended, has as its prime concern "the goal of a decent home and suitable living environment for every American family."
2. That no legislation except the Area Redevelopment Act authorizes federal financial assistance in nonresidential areas and that the Area Redevelopment Act does not apply here.
3. That the Area Redevelopment Act acknowledges the predominantly residential requirement of 42 U. S. C. 1460 (c); and
4. That the Urban Renewal Manual of the Housing and Home Finance Agency acknowledges the predominantly residential requirement of 42 U. S. C. 1460 (c).

CONCLUSION.

The Court below "has decided an important question of law which has not been, but should be, settled by this Court."

Pursuant to Rules of the Supreme Court of the United States, Part V, Rule 19 (b) we ask that the petition for a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX.

Housing Act of 1956, Public Law 1020-84th Congress Chapter 1029-2nd Sess., H R 11742, August 7, 1956. Sec. 302(b).

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not clearly predominantly residential in character unless such area will be a predominantly residential area under the urban renewal plan therefor:

Provided, That where such an area which is not clearly predominantly residential in character contains a substantial number of slum, blighted, deteriorated, or deteriorating dwellings or other living accommodations, the elimination of which would tend to promote the public health, safety, and welfare in the locality involved and such area is not appropriate for predominantly residential uses, the Administrator may extend financial assistance for such a project, but the aggregate of the capital grants made pursuant to this title with respect to such projects shall not exceed 10 per centum of the total amount of capital grants authorized by this title."

Housing Act of 1959, Public Law 86-372, 86th Congress, S.2654, Sec. 413, September 23, 1959.

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor; is not to be redeveloped for predominantly residential uses:

Provided, That if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this title for such a project: Provided further, That the aggregate amount of capital grants contracted to be made pursuant to this title with respect to such projects after the date of the enactment of this Housing Act of 1959 shall not exceed 20 per centum of the aggregate amount of grants authorized by this title to be contracted for after such date."